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Statutes

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 229

WILLIAM TALMADGE SPEARS, BETTIE TUNSELL, and I. H. SPEARS,
Petitioners and Appellants Below,

v.

EVA MAE SPEARS, Individually, and EVA MAE SPEARS as Special Administratrix of the Estate of Mansfield L. Spears, Deceased, THE AETNA CASUALTY AND SURETY COMPANY of Hartford, Connecticut, and COMMUNITY NATIONAL BANK of Pontiac, Michigan,
Respondents and Appellees Below.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

BRIEF FOR RESPONDENTS

OPINION BELOW

The opinion in the Circuit Court of Appeals is reported in .....F. (2d) ..... (Supp. to Supp. R. 47-52).

JURISDICTION

Petitioners have invoked the jurisdiction of this Court under Section 1(a) of the Act of February 13, 1925, as amended, U. S. C. A. Title 28, Section 347(a). The judgment of the Circuit Court of Appeals was entered on June 5, 1947. (Supp. to Supp. R. 46).

I

STATEMENT OF THE CASE

This is an action praying for equitable relief brought in the District Court of the United States for the Eastern District of Michigan, Southern Division, by William Talmadge Spears, Bettie Tunsell, and I. H. Spears, petitioners herein, against Eva Mae Spears, individually, and as special administratrix of the estate of Mansfield L. Spears, deceased, The Aetna Casualty and Surety Company, surety on the bond of the special administratrix, Leon H. Hubbard, successor special administrator of the estate of Mansfield L. Spears, deceased, and Community National Bank of Pontiac, Michigan, respondents herein, on May 25, 1946, growing out of the following facts:

Mansfield L. Spears, a resident of Oakland County, Pontiac, Michigan, died on September 16, 1945. He left surviving him his widow, Eva Mae Spears, one of the respondents herein, and William Talmadge Spears, one of the petitioners herein as his heirs at law and next of kin. Between March 28, 1945, and the date of his death, the decedent executed three successive wills, namely, one on March 28, 1945, one on August 13, 1945, and one on August 27, 1945, and in each of which he specifically revoked all prior wills (R. 3, 4, 12; Ex. VI, Supp. R. 14).

The will executed on August 27, 1945, was presented to the Probate Court of Oakland County, Michigan, by Eva Mae Spears, the surviving widow, as the Last Will and Testament of the decedent, and the petitioners and other relatives objected to the admission of that will to probate, and gave notice that they would contest its validity (Ex. I, Supp. R. 1, Ex. IV, Supp. R. 8, 9, 10).

On petition of the contestants, the Probate Court certified the contest to the Circuit Court of Oakland County, Michigan, in accordance with the provisions of Section 27, 3178 (36) of Michigan Annotated Statutes (Ex. V, Supp. R. 11, 12). By its decree entered on May 9, 1946, the Circuit Court of Oakland County, Michigan, allowed the will executed on August 27, 1945, as the Last Will and Testament of Mansfield L. Spears, deceased, and directed the Probate Court to admit it to probate (Exs. VI, VII, Supp. R. 14-19).

The Probate Court of Oakland County, Michigan, appointed Eva Mae Spears special administratrix to take charge of, and protect, the estate of Mansfield L. Spears, deceased, pending a decision in the will contest in the Circuit Court, and The Aetna Casualty and Surety Company became the surety on her bond (R. 2).

Subsequently, on petition of the contestants, the Probate Court removed Eva Mae Spears as special administratrix, and appointed Leon H. Hubbard as her successor (Exs. II, III, Supp. R. 5, 6, 7). Thereafter, Eva Mae Spears filed her account as special administratrix, to which the contestants and petitioners filed objections, and after a hearing, the Probate Court allowed the account, and discharged Eva Mae Spears and released her surety from liability.

At the time of the decedent's death, there was an account in Community National Bank of Pontiac, Michigan, which stood in the joint names of Mansfield L. Spears and Eva Mae Spears, with the right of survivorship. A controversy arose between the petitioners and Eva Mae Spears over the ownership of the joint bank account. Eva Mae Spears filed a suit in the Circuit Court of Oakland County, Michigan, in which she joined petitioners and

others claiming an interest in the estate, and Community National Bank as parties defendant, to establish her ownership of the bank account as the surviving joint depositor (Exs. VIII, IX, Supp. R. 20-31). The Circuit Court, by its "opinion" dated April 16, 1946 (Ex. X, Supp. R. 32-38), and its "amended decree" entered on May 6, 1946, held that the joint deposit in Community National Bank survived to, and became the sole property of, Eva Mae Spears upon the death of Mansfield L. Spears, and that it was no part of his estate for administration (Ex. XI, Supp. R. 39-42).

Petitioners appealed from the decrees of the Circuit Court of Oakland County, Michigan, in both the will contest and the suit of Eva Mae Spears to establish ownership of the joint bank deposit to the Supreme Court of Michigan, and that court dismissed both appeals on March 4, 1947, whereupon I. H. Spears, one of the petitioners herein, prosecuted appeals to this court where they were treated as petitions for certiorari, and were both denied by this court on June 2, 1947. (*Spears v. Spears*, U. S. ....., 67 S. Ct. 1517, 1524.)

It was against this background that this action was brought in the District Court. The complaint recites some of the facts set forth herein, and it particularly mentions the wills executed on March 28, 1945, and on August 13, 1945, and quotes the latter at length (R. 3, 4, 5), but it fails to mention the will executed on August 27, 1945, or the fact that it had been admitted to probate after a contest. Neither did the complaint mention the fact that the Circuit Court of Oakland County, Michigan, had adjudged the ownership of the joint deposit in Community National Bank. The complaint also omitted any mention of the fact that Eva Mae Spears had filed her account as special ad-

ministratrix which had been allowed by the Probate Court of Oakland County, Michigan, over the objections of petitioners, and that she and her surety had been discharged from liability.

The prayer for relief was: (1) that the District Court admit the will executed on August 13, 1945, to probate as the Last Will and Testament of Mansfield L. Spears, deceased; (2) for a determination of the heirs of the deceased; (3) for an adjudication of the ownership of the joint bank account in Community National Bank; (4) for an accounting of the fiduciaries appointed by the Probate Court of Oakland County, Michigan; (5) for a decree of distribution of the estate in accordance with the provisions of the will executed on August 13, 1945; and (6) for a decree to quiet title in real estate (R. 5-10).

All of the defendants below, except Leon H. Hubbard, special administrator, filed separate motions to dismiss the suit under Rule 12(b), (1), (2), (4), (5), and (6 of Federal Rules of Civil Procedure, and annexed as exhibits thereto certified transcripts of the proceedings in the State Courts to show: (1) lack of jurisdiction over the subject-matter; (2) failure of the complaint to state a claim upon which relief could be granted; and (3) lack of jurisdiction over The Aetna Casualty and Surety Company because of improper service of process (R. 12-22, Exs. I-XI, Supp. R. 1-43).

The District Court sustained all motions, and dismissed the suit without prejudice to the rights of petitioners to refile it at the conclusion of the litigation in the State Courts, and it quashed the service of process on The Aetna Casualty and Surety Company on account of insufficient and improper service (R. 22, 23). Petitioners appealed from the District Court's order of dismissal, and

the Circuit Court of Appeals affirmed that order, except that the District Court was directed to dismiss the suit with prejudice (Supp. to Supp. R. 47-52).

II

QUESTIONS PRESENTED

(1) Whether the Federal Court has jurisdiction to probate a will or to construe an instrument purporting to be a will which has not been admitted to probate.

(2) Whether the Federal Court has jurisdiction to require an accounting of a fiduciary appointed by a State Court.

(3) Whether the Federal Court can interfere with property in the custody and possession of a State Court.

(4) Whether the probate of wills and the administration of estates constitute a suit or action *inter partes* within the equity jurisdiction of the Federal Court.

(5) Whether Rule 12(b) of Federal Rules of Civil Procedure authorizes "speaking motions" to traverse the truth of the allegations of a complaint as to jurisdiction.

III

SUMMARY OF ARGUMENT

POINT A

The decision of the Circuit Court of Appeals as to the lack of jurisdiction in the Federal Court to probate a will or to construe an instrument purporting to be a will which has not been admitted to probate; or to require an accounting of fiduciaries appointed by a State Court; or to adjudicate the ownership of property in the possession and control of a State Court, is not in conflict with the Circuit Court of Appeals of any other Circuit.

POINT B

The decision of the Circuit Court of Appeals as to the nature of probate proceedings under the statutes and decisions of Michigan is not an important question of local law which is in conflict with applicable local decisions.

POINT C

The decision of the Circuit Court of Appeals, by holding that the probate of wills and the administration of estates in Michigan is not a suit or action *inter partes* within the equity jurisdiction of the Federal Court, involves no important question of federal law which has not been passed upon, and settled by this Court.

POINT D

The decision of the Circuit Court of Appeals as to the effect of a motion to dismiss under Rule 12(b), Federal

Rules of Civil Procedure, by holding that where the motion traverses the truth of the allegations as to jurisdiction, and recites facts *de hors* the record, it does not constitute an admission of facts, is not a decision of a federal question in a way in conflict with applicable decisions of this Court.

POINT E

The decision of the Circuit Court of Appeals as to lack of jurisdiction in the Federal Court to grant any of the relief prayed for in petitioners' complaint, by holding that the suit should be dismissed with prejudice, neither departs from the accepted and usual course of judicial proceedings, nor sanctions such a departure by a lower court, and it does not call for an exercise of this Court's power of supervision.

IV

ARGUMENT

Point A

The decision of the Circuit Court of Appeals as to the lack of jurisdiction in the Federal Court to probate a will or to construe an instrument purporting to be a will which has not been admitted to probate; or to require an accounting of fiduciaries appointed by a State Court; or to adjudicate the ownership of property in possession and control of a State Court, is not in conflict with the Circuit Court of Appeals of any other circuit. On the contrary, there is complete harmony in the decisions of the Circuit Courts of Appeals for the several circuits on the same matter.

O'Connor v. Slaker, 22 F. (2d) 147, Appeal Dismissed, 278 U. S. 188.
Guilfoil v. Hayes, 86 F. (2d) 544.
Caesar v. Burgess, 103 F. (2d) 503.
Miami County National Bank v. Bancroft, 121 F. (2d) 921.
Blacker v. Thatcher, 145 F. (2d) 255.

There is no conflict between the several circuits, for the several Circuit Courts of Appeals have adopted the rule established in this Court by a long line of decisions on the same question.

Broderick's Will, 21 Wall. 503.
O'Callaghan v. O'Brien, 199 U. S. 89.

Waterman v. Canal-Louisiana Bank & Trust Co., 215 U. S. 33.
Sutton v. English, 246 U. S. 199, 205.
Princes Lida v. Thompson, 305 U. S. 456.
Markham v. Allen, 326 U. S. 490.

Point B

The decision of the Circuit Court of Appeals as to the nature of probate proceedings under the statutes and decisions of Michigan is not an important question of local law which is in conflict with applicable local decisions. On the contrary, the decision by the Circuit Court of Appeals in the instant case is in complete harmony with the local decisions. The Statutes of Michigan provide for the procedure to be followed in probating a will, and in disposing of estates of deceased persons, and protection is provided for the rights of all parties in interest.

Michigan Statutes Annotated, Section 27.3178 (19), (36), (50), (91), and (94).

The Supreme Court of Michigan has held that the probate of wills and the administration of estates are not proceedings *in personan*, but belong rather to a class of action *in rem* or *quasi in rem*.

Stevens v. Hope, 52 Mich. 65, 17 N. W. 698.
In re Brown's Estate, 198 Mich. 544, 165 N. W. 929.
Calhoun v. Cracknell, 202 Mich. 430, 168 N. W. 547.
Thompson v. Thompson, 229 Mich. 526, 201 N. W. 533.

In the case of *Thompson v. Thompson*, supra, the Court specifically held that the administration of estates is not in the nature of a suit between parties.

Point C

The decision of the Circuit Court of Appeals, by holding that the probate of wills and the administration of estates in Michigan is not a suit or action *inter partes* within the equity jurisdiction of the Federal Court, involves no important question of federal law which has not been passed upon, and settled by this Court. While the questions involved relate to the jurisdiction of a Federal Court over the probate of a will, the administration of an estate, including the accounting of the fiduciary, and the property in possession of a State Court, and while the jurisdiction of Federal Courts is governed by federal law, this Court has already settled those questions insofar as they are presented by the facts of the instant case.

Broderick's Will, 21 Wall. 503.
Byers v. McAuley, 149 U. S. 608.
O'Callaghan v. O'Brien, 199 U. S. 89.
Waterman v. Canal-Louisiana Bank & Trust Co., 215 U. S. 33.
Sutton v. English, 246 U. S. 199.
Penn. General Casualty Co. v. Pennsylvania, 294 U. S. 189, 105, 106.
United States v. Bank of New York & Trust Co., 296 U. S. 463, 477.
Markham v. Allen, 326 U. S. 490, 494.

The uncontroverted facts of this case demonstrate clearly that the District Court lacked jurisdiction over the subject-matter of the complaint filed by petitioners upon any theory when those facts are measured by the rules laid down by this Court in *O'Callaghan v. O'Brien*, supra. The Circuit Court of Appeals scrupulously followed the decisions of this Court in its decision.

Point D

The decision of the Circuit Court of Appeals as to the effect of a motion to dismiss under Rule 12(b), Federal Rules of Civil Procedure, by holding that where the motion traverses the truth of the allegations as to jurisdiction, and recites facts *de hors* the record, it does not constitute an admission of facts, is not a decision of a federal question in a way in conflict with applicable decisions of this Court. On the contrary, the Circuit Court of Appeals followed the decisions of this Court in holding that the respondents properly annexed affidavits and certified transcripts of the proceedings in the State Courts to traverse the truth of the allegations of petitioner's complaint as to jurisdiction.

Kvos, Inc. v. Associated Press, 299 U. S. 269, 278.

The burden rested upon petitioners to support their jurisdictional allegations by competent proof when the truth of those allegations was challenged by respondents in any appropriate manner.

McNutt v. General Motors Acceptance Corp., 298 U. S. 178, 189.

Petitioners had to allege in their complaint the facts essential to show that the District Court had jurisdiction. They attempted to do so by concealing the existence of a will which had been admitted to probate after a contest, and by suppressing the facts pertaining to the State Court litigation (R. 1-10). If they failed to make the jurisdictional allegations, they would have no standing. If they made the necessary allegations and if they were untrue, they would likewise have no standing. Rule 12(b), Federal Rules of Civil Procedure, authorized the respondents to challenge the truth of the allegations as to jurisdiction by motions

to which were annexed exhibits which evidenced uncontradicted facts to show that the jurisdictional allegations were not true, and that the Court was without jurisdiction to grant the relief prayed for in the complaint.

Gallup v. Caldwell, 120 F. (2d) 90.
Boro Hall Corp. v. General Motors Corp., 124 F. (2d) 822, Certiorari denied, 317 U. S. 695.
Victory v. Manning, 128 F. (2d) 415.
Samara v. United States, 129 F. (2d) 594.
Ellis v. Stevens, 37 Fed. Supp. 488.
Yudin v. Carroll, 57 Fed. Supp. 793.

Point E

The decision of the Circuit Court of Appeals as to lack of jurisdiction in the Federal Court to grant any of the relief prayed for by petitioners, by holding that the suit should be dismissed with prejudice, neither departs from the accepted and usual course of judicial proceedings, nor sanctions such a departure by a lower court, and it does not call for an exercise of this Court's power of supervision. The suggestion in petitioners' petition and brief that the Circuit Court of Appeals has departed from the accepted and usual course of judicial proceedings, or has sanctioned such a departure by the District Court, is almost too frivolous to require reply. Certainly there is nothing in the history of this case to suggest that either the District Court or the Circuit Court of Appeals has in any way violated the integrity of the federal judicial process. The petitioners were the ones who were seeking to have the District Court and the Circuit Court of Appeals depart from the accepted and usual course of judicial proceedings.

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this Court, and that the petition for a writ of certiorari should be denied.

ELMER W. BEASLEY,
WALTER A. MANSFIELD,
GEORGE A. SUTTON,
Counsel for Respondents.

Dated August 14, 1947.

CERTIORARI

DENIED